

**Civil Service Board
Special Meeting
1/15/2014
3:00 P.M.**

In Attendance:

Board Members:

Marv Rosen, Chair
Carolyn Worthington
Alan Coxie
Virginia Robinson
Lynn Moffa

Other Attendees:

Patsy Bryson – Attorney for the Board
Kelley Dickens – Human Resources Director
Derrick Swing – Human Resources Manager
Jennifer Johnson – Human Resources
Chief Scott Burnette – Asheville Fire and Rescue
Timothy Fortenberry – Asheville Fire and Rescue
Firefighters – Asheville Fire and Rescue

Marv Rosen – Welcome to this special meeting of the Civil Service Board Chief, Burnette, Ms. Dickens and interested participants. I hope that we will have an open discussion today. I think that our ruling in the Fortenberry grievance has presented some additional need for review of Fire Department policies. Chief, I appreciate you bringing those to us today for, I hoping for our guidance or advise to help you resolve the issues that came out of that decision. We are also open to hearing any comments from anyone in attendance today. I'll turn it over to you Chief, apparently you have created an agenda and let's go on with that.

Chief Burnette - Yes, sir. Thanks to Board for their time today for this important matter. Kelley Dickens (HR Director) and myself, following the order that was delivered on 1/3/14, wanted to bring potential solutions for this issue that we have identified for your review and guidance. And with that, I would like to turn it over to Kelley Dickens. Ms. Dickens will present different options.

Kelley Dickens – I would like to walk you through the PowerPoint presentation and have given out copies of the presentation. Some things highlighted on the presentation won't be highlighted on the paper version. The agenda for today that we've set forth is one, we'd like to review the order that came out of the last grievance hearing in December and where we've been focusing since. What that order was and what we've been focusing on since that hearing. The possible outcomes that the City has looked at is potential resolutions based on that order and to review the impact of each of those options for you and get some input on the Board's suggestions as where we go. Because with each of the options there is potential impact on one or more employees and while it is not the Board's authority to direct the City, we would still like the Board's input and discussion about next steps.

The part of the order that we are focused on this statement that came right out of the order on January 3rd that the application of the 2011 change, the eligibility criteria and participation in a promotional process is hereby rescinded in as far as that the failure to promote Fortenberry as part of the 2012

promotional process. That's what we really focused on and how would the Board want us to move forward in response to that. A quick review of the timeline we've looked at were the changes made in 2011 it was applied consistently since that time. We realize it was not approved by the Board but it had applied consistently with every employee. It was communicated to every employee and the promotional processes was announced and shared with the employees. Since that eligibility change they had held promotional processes for LT. and engineer in 2011 and in 2012 Battalion Chief, LT. and Engineer and in 2103 LT. and engineer processes and senior firefighter processes are kind of an ongoing thing. Those are non-competitive but are a promotion in the department. We've applied that to senior firefighters as well. Once they reach the two years of service they are able to test and once they reach their eligibility and pass that test, they are automatically promoted to senior firefighter. The department has a set number of positions that when it comes to our company officers and that would be LT. and Captain positions. We only have 48 Captain and LT. positions, we can't just create those when we want to promote someone, that's how the department is budgeted. We have set number of positions each with a specific assignment. Promotions occur for all of those except senior firefighter when a vacancy occurs. We go to the eligibility list and promote. Any questions?

These are the things we identified,

1. We rescind the change to the promotional processes.
2. Promote the grievant and have an extra LT. until additional turnover or retirement at that level.
3. We could request Council to add a full time position to the department to be classified as a company officer or LT.
4. The Board could retroactively approve the change back to 2011 based on the impact and the fact that is what we consistently used.

I'll be happy to answer questions as we go along or at the end.

Kelley Dickens presented and explained the PowerPoint presentation. She explained how the presentation presented the different options stated above and answered questions about it. A copy of this presentation is attached.

Marv Rosen – Just to verify on the current eligible list, there are two people who are Davis and Lambert who are eligible by based on previous assumptions prior to the Fortenberry decision. Neither one of those has been promoted yet.

Kelly Dickens – Correct.

Virginia Robinson – It seems to me that you are talking about removing people who were on this battalion chief list and putting them back as LTs which would reduce the amount of LTs needed. Of those that were tested and promoted no one grieved against their promotions, it seems to me that, OK, everybody accepted that and didn't say anything about it. The only time that we have is not the first problem that we have where there was a grievance was with the LT's list we just did the grievance from. There wasn't any interest in a grievance if we could just some how say that this is the first one we're going to deal with and deal with it from here forward and not go back. Could we not do that?

Kelley Dickens – I don't know if that would create additional grievances for the department at this point.

Virginia Robinson – The grievant period has already passed because they only have 30 days to file a grievance and this was in 2012 so their time limit has expired to when they can file a grievance.

Kelley Dickens - I think we would have to look at that through the grievance that was submitted and the action that we take as a result and would that action open that employee up to an opportunity to file a grievance. We don't want to shut down an employee's opportunity to at least file a grievance it is considered by what we decide here. We would need to review that.

Marv Rosen – Do you have a preferred suggested recommendation for us to consider?

Kelley Dickens – Let me walk through some of the other pieces of this since there could be some other options that we suggested and then we could talk about that.

Lynn Moffa – Before you do that, let's follow up on what Virginia was saying so I'm clear. This last 2013 Engineer process is the one you said has not happened yet?

Kelley Dickens – We have not promoted anybody off of that list. The process has already happened and these are the people that are eligible.

Lynn Moffa – OK, you could recalculate...

Kelley Dickens – We would have to retest everybody.

Lynn Moffa – Is that not practical? Couldn't you just eliminate the people and reorder them?

Kelley Dickens – That's correct depending upon what other steps we take. Say, we're not going to demote Rauschenbach because he shouldn't have been promoted, he may have been a candidate and there's no way to say where he would have fallen in that pool.

Lynn Moffa – I understand that but depending on what action we take, my question is: if we are able to something along the lines of what Virginia said and just look prospectively and not retrospectively at all. In this current process.

Kelley Dickens – Yes, you could just remove the people from the list.

Lynn Moffa - and would this action taken as to Fortenberry depend on what option we chose? Would it change this list other than removing the people who shouldn't be on there and the scoring?

Kelley Dickens – I don't know that it would but we're not sure what we're going to do with that LT 2012.

Lynn Moffa – I'm just looking ahead and thinking that it might not be all that difficult.

Kelley Dickens – There is that possibility. For us to promote the grievant currently we don't have a vacancy and so what are some of the things we could do? We could demote the last person who was promoted which was Rauschenbach. While this would be a non disciplinary demotion we don't to make it a grievable demotion. He would also be impacted by not being able to participate in the 2013 engineer or LT process. He had been promoted so he had no reason to compete and we would have to null and void those processes and allow him to be a part of that or we aren't sure what to do with him if

he is demoted. We could reclassify a current position that exists to a company officer or LT. and have an additional person in that role until the next retirement or someone leaves of that rank.

Virginia Robinson – As I recall there is testimony that there are LTs just riding in a truck that are not serving as a LT. If that's the case, then why couldn't that also be somebody...

Kelley Dickens – I'll let the Chief speak to that.

Chief Burnette – We have 48 budgeted company officers positions and that is what we always have. In the example that was given for a very temporary period of time because of two factors; one, because of training involvement and the other is because of vacation scheduling. We schedule our vacations a year in advance. When we had two additional company officers that had we wanted to make sure they were promoted as soon as a vacancy came open. We kept our 48. They were eligible and by rights they needed to be promoted. Rather than have them change shifts in the middle of a scheduled vacation it made more sense to honor that employee's scheduled vacation and not have them move to a different shift. That is correct for a short period of time on B shift where we normally would have 16 company officers, we had 18. After the vacation issue they were assigned to other shifts.

Alan Coxie – Under the second option reclassify a current position and have an extra position until additional turnover occurs and remedy you back to your current positions, if we chose that option would you have meaningful work for Mr. Fortenberry until attrition solves that issue?

Chief Burnette – We don't have any positions that are budgeted for that but we absolutely find meaningful work for that position. We're right now beginning the budget process.

Alan Coxie – I'm not asking about the budget only positions if we could have meaningful work for him as a LT until attrition solves this.

Chief Burnette – We do not, although we could find meaningful work, certainly.

Lynn Moffa – In terms of turnover are you able or willing to comment on any kind of estimate that the department has an average turnover.

Chief Burnette – We have 3 current officers that have said they would retire this year and I would be surprised if we went a year without a retirement. That would be very unusual.

Alan Coxie – On the bottom of this slide, it says that there is a budgetary consideration for this option.

Chief Burnett – If it were one quarter it would be \$18,000 multiply that out until the next retirement.

Alan Coxie – So that 18 is actually 10 per cent?

Chief Burnette – That is correct, right off the top of my head right now.

Alan Coxie – Is that doable within your budget?

Chief Burnette – Yes, Sir.

Kelley Dickens – We think there is a current eligibility list and there is some question of those on the current list to agree that they were not promoted to this new created position.

Lynn Moffa – Do you know what that grievance would sound like if the Board decided that the rule was invalid or if the rule was valid?

Kelley Dickens – I think in this instance if you go to the current LT eligibility list the next person on the list to be promoted is Walton and he may have a grievance that I'm next on that list.

Patsy Bryson – Let me interrupt briefly. This is totally hypothetical at this time.

Lynn Moffa – I'm just trying to get a picture of what that would look like. Just trying to get what the claimed grievance would be.

Kelley Dickens - We'd have to wait and see.

Patsy Bryson – The question is whether the Board has a right to hear it.

Lynn Moffa – And evaluate the possibility of merit.

Kelley Dickens – Next option was requesting an additional full time position in the department. We would go to City Council and request a new position of a new company officer. The position would most likely be administrative or special assignment. This position would cost approximately \$80,000 ongoing. Those on the current eligibility list wouldn't be put into that position.

Alan Coxie – Is that something that you would like to pursue? Is there some basis for making this recommendation?

Chief Burnette – Our first priority is our minimum staffing and get more of our 3 person companies to 4 person companies. The FTEs that I do ask for is for minimum staffing.

Alan Coxie – How many of your companies are at the 4 company level and how many need to?

Chief Burnette – Eight.

Alan Coxie – If you created a new position it would help with the minimum staffing, correct?

Chief Burnette – We could have 2 company officers on one truck on one shift that would be that person would be filling the role of a firefighter even though a LT, but only one person would be in charge of the truck. We could help that with another position with them filling the role as a firefighter. We'd have to walk through how that would look since we'd have two company officers on shift.

Alan Coxie – Would that be the only role to serve as a firefighter, any circumstance where he would function as a LT?

Chief Burnette – That person could function as a firefighter and if there were vacancies they could fill in those vacancies. We would come up with a mechanism to try to use them as a company officer as much

as possible. We could find meaningful work at a company officer level. FTE count should certainly be for minimum staffing.

Alan Coxie – Other fire departments create a position used as a training position, learning as they go, and then when a position opens up they are transferred into it. Is that something that would interest you?

Chief Burnette – We moved away from that because it was not successful here at the AFD at the time we did it, but it is an option.

Alan Coxie – Is there any position or need for an officer that you might want to create and have full time? Any other option for a LT?

Chief Burnette – We don't have any full time, all those positions are on shift with minimum staffing. The safety and training officer are on shift. We could find meaningful work in a variety of areas.

Alan Coxie – Do you have a short list of where you would put 3 people if you could?

Chief Burnette – On trucks for safety.

Lynn Moffa – From the department's prospective would it create a serious morale problem concerning the eligibility list?

Chief Burnette – This is my only experience with a grievance it certainly a significant cost for the grievant and for myself and other members of the department and so the other cost is the distraction. The other is that there is going to be improvement, improving the process, so that outweighs those costs. It also depends on what option we go with.

Lynn Moffa – This is the first grievance you've been involved with?

Chief Burnette – It's actually the first one since I've been Chief and Asst Chief before that.

Lynn Moffa – This is stressful and I'm sure you like to not have any more.

Chief Burnette – I want to make sure that everyone knows that I understand that cost of the stress and the time is 10 fold on the grievant than on me.

Kelley Dickens – The last option is retroactive approval. Change was made in 2011, it was applied consistently. Option to remain on current eligibility list and remain active and then on this list like any other candidate on this list, they can test again. We'll continue to evaluate all promotional process and bring them to the Board. Of the options we were looking at, we felt like this was one that we could throw out there. That's the four we'd like to present to the Board and felt like it would be beneficial to get input from the Board on these options. Each option potentially affects employees. A draft of this information was shared yesterday with the members of the current promotional advisory committee and several others during an open meeting. Every employee was notified that we were having that. We asked for feedback or other options that they can come up with. There was one other option that was presented by someone in that meeting and we didn't add it because I don't think it is an option that

the City would consider that being to promote everyone on the current eligibility list and have that number of LTs in excess until we get attrition which could be 2 or 3 years.

Lynn Moffa – I worked for the Federal government and when there was a mistake it wasn't undone but they were given preference for next promotional process. You wouldn't have to create new position with that. Could that be an option?

Kelley Dickens – We could look at that. It is possible that he could be bumped to the top, but we could be looking at a potential grievance, I don't know.

Lynn Moffa – Everything we do could create a grievance, a rule could be made to apply from now on how to address a mistake issue it would apply equally to everybody and in that sense it's fair.

Kelley Dickens – Any questions from anyone here who wishes to speak? None.

Marv Rosen – A question on gray listing, maybe expanding that an additional year that they will become eligible. Is it only one person who has been promoted with that policy?

Kelley Dickens – Yes.

Chief Burnette – One person in a competitive process. There have been 3 battalion chiefs, sorry.

Virginia Robinson – It was not a competitive, because there was no one else who had tested.

Chief Burnette – Yes, that is correct. It was a competitive process. But you are correct that we had 3 vacancies and we had 3 people on the list so all were promoted eventually.

Marv Rosen – So no one was denied that position? (Chief Burnette: Yes) I'm looking for some creative ideas here. I am committed to the belief that this Board decided that gray listing is something that we don't support. I'm very sympathetic to your position and other officers on the promotion list. What are possibilities of a temporary exclusion for already promoted and then not do that any more, any flexibility to do that?

Chief Burnette – We are no longer gray listing. Sr. firefighter is not competitive.

Alan Coxie – My vote wasn't against gray listing. I'd like a department presentation on how other departments handle gray listing, need data if you could you bring to the Board, not today. I just want to address the grievance today.

Lynn Moffa – The merits of gray listing is open but not today, the main issue is what is fairest for Mr. Fortenberry and what is the least disruptive to the department.

Alan Coxie – That's my priorities as well. Can't vote for retro approval.

Lynn Moffa – I interpret as the policy was in play and not challenged, but has been declared invalid.

Alan Coxie – I don't want to go back until there is better information, not for it, minimum disruption can be done without hurting Fortenberry. The first one is most doable, using gray list to keep position and don't undo since they competed fairly until attrition resolves this and promotion list is fixed.

Chief Burnette – The estimate I gave is \$18,000 to 20,000 is annual cost not quarterly

Alan Coxie – It seemed high and seems minimal.

Lynn Moffa – What is your view of option 4?

Chief Burnette – If we have 4 and I'm number 4, because of the Chief's mistake someone else got promoted and I was more qualified. Three will retire, and because of the Chief, I didn't get a promotion, if I was Josh. I should have been promoted in April and it cost me because I had to wait until September.

Virginia Robinson – When we look at the 2014 list, at least one person is going to suffer any way we go. Need to go with the least amount of impact.

Carolyn Worthington – Can we put a hold on the promotion?

Kelley Dickens – We can...

Carolyn Worthington – A hold to satisfy this action?

Chief Burnette – Under that model, there would be no promotions, a temp officer (49th) until we get to 48 and then go to promoting only when there is a vacancy. The only complication is the next person won't get the next position. Someone won't get promoted.

Alan Coxie – Is there a hold or would the clock continue to run?

Patsy Bryson – Listening to the comments, it sounds like keeping everyone in place for now and then some sort of blend and then come back to the Board about gray listing.

Marv Rosen – Good point. Changes to 2011 and how they affect Fortenberry and your solution covers until that point in time.

Marv Rosen – I misspoke, I like the concept of a blend.

Patsy Bryson – We can check the calendar to see when the Board could meet.

Derrick Swing – February 6, 2014

Virginia Robinson – Can you freeze this until resolved? Hopefully within a couple of weeks.

Chief Burnette – We have engineers promoted that are not affected by this list.

Virginia Robinson - haven't decided all come back down the line

Chief Burnette – You're correct. Promote as soon as vacancy occurs, effective date of the retiree and get it fixed by February or March.

Virginia Robinson – Need to stop problems without making more problems, Angie Bell is one issue already.

Marv Rosen – We're open to guest comments.

Fortenberry – If it got down to Dehart and not a spot, 2014 test comes out on top of list so he would receive his promotion. Only problem if not promoted, that would affect me and two years of pay. I don't want anyone to be affected, it's a really difficult situation.

Marv Rosen – A possibility exists that someone will grieve after listening to HR and the Chief, we want the least impact as possible.

Fortenberry – My opinion is how it stands now.

Patsy Bryson – Accept the 2013 list.

Marv Rosen – I think the census of the Board is to revisit the concept of gray listing before the next promotions.

Alan Coxie – an open meeting specifically to make sure you have the opportunity to speak. I defer to the attorney. I get your argument, fix it first and look at gray listing later and make a decision without retro gray listing, that impact.

Lynn Moffa – I agree with Alan. I feel that this was a procedural decision that the Chief had apparent authority to do what he did. It should be addressed on merits and keep it out of this decision. We need the most competent to lead in fires.

Fortenberry – I don't do written well, in at top 3 on test. Don't want to hear about sending best leader into fire.

Alan Coxie - Both points of view are correct, teach law, no process can ever make sure the best goes in, but must design as best as we can.

AFD member: If there is an error in gray listing, why not grieve at the beginning of the year?

Lynn Moffa – I had trouble with that also. At the end of the process, it's not fair then and should have been addressed in 2011. That's how we interpreted it, wanted to be fair and not cut off his rights.

Alan Coxie – Comments, suggestions, fair enough.

Marv Rosen – Chief, are you agreeable to hold promotions for a month or so and put before the Board?

Chief Burnette – After it's resolved, retro back to that day.

Alan Coxie – Could we get a time for the report on gray listing?

Chief Burnette – I think the best way to address if it is good or not, is to use Survey Monkey is one option. It limits options.

Alan Coxie – Survey Monkey will put in a comment box and we will sit here as long as it takes. Why delay.

Kelley Dickens – We can do it the last week of February.

Marv Rosen – Is that a reasonable time for you?

Lynn Moffa – It's enough time to go back, it would influence me more than the powerpoint, by how many don't like or do like it.

Alan Coxie – Scott has addressed back pay. The Board doesn't need to make a rush decision, it could screw something else up. We need input and to slow down.

Lynn Moffa – It's 2 difficult decisions.

Patsy Bryson – Two at different times, one earlier

Alan Coxie – Don't want to rush.

Virginia Robinson – Something is bothering me. I hope that the Chief and others are not going to treat someone badly due to their speaking up.

Chief Burnette – You do not have to worry about that. I'm a professional and the Asheville Fire Department is a professional organization.

Patsy Bryson – By 2/6/14 we need some kind of blend and the impact to put up for action then and take up gray listing on 3/14/14.

Marv Rosen – Who's responsible for drafting a proposal?

Kelley Dickens – Council and the HR advisory group will be happy to work with you.

Patsy Bryson – The City should decide what they want to propose.

Marv Rosen – Any further comment? I appreciate the Chief bringing this to us today.

Chief Burnette – Thank you.

Marv Rosen – motion to adjourn, and seconded. Adjourned.

